dicted its decision. I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; Donaldson & Burkinshaw; R. R. Chelliah Bros.*

REDDY v. EMPLOYEES PROVIDENT FUND BOARD

[O.C.J. (Raja Azlan Shah J.) April 18, 1967]

[K.L. — Originating Summons No. 208 of 1965]

Provident Fund — Withdrawal — Employee leaving States of Malaya for Borneo States — Whether so entitled — Employees Provident Fund Ordinance, 1951, s. 13(1)(d).

Interpretation — Meaning of "Malaya" on formation of Malaysia — Canon of construction — Malaysia Act, 1963, s. 73(1) — Malaysia Constitution, art. 1(2) — Interpretation and General Clauses Ordinance, 1948, s. 2.

The applicant sought for a declaration that he was entitled to withdraw the whole of the money standing to his credit with the Employees Provident Fund. He was an officer in the service of the Federal Government and had since left and was at the time of these proceedings a judicial officer in the Borneo States. Under section 13(1)(d) of the Employees Provident Fund Ordinance withdrawal was permitted if an employee was about to leave "Malaya" with no intention of returning. The sole issue was whether "Malaya" meant "Malaysia" thus including the Borneo States.

Held: the word "Malaya" and "States of the Fedetion" appearing in the Employees Provident Fund Ordinance and the Interpretation and General Clauses Ordinance were not amended to fit in with the new changes on the formation of Malaysia. However under the proviso to section 73(1) of the Malaysia Act references to the federation were to be construed as references to Malaysia and expressions importing such a reference were to be accordingly construed, it followed that reference to the States of the Federation would be construed to mean the states of Malaysia and Singapore and with the secession of Singapore it would then mean the States of Malaysia.

Cases referred to:—

(1) *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.* (1877), 2 App. Cas. 394, 412.

(2) *Barnes* v. *Jarvis* [1953] 1 W.L.R. 649.

ORIGINATING SUMMONS.

Dato' Athi Nahappan for the applicant.

Robert Ho for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for a declaration that K. C. I. Reddy is entitled to withdraw the whole of the sum standing to his credit in the Employees Provident Fund.

It is not disputed that at the time of the action the applicant was a magistrate in the Judicial and Legal Service of the Government of the Federation of Malaysia. He had then applied for service in the Judicial and Legal Service of the Government of the Borneo States and therefore he intended to leave the States of Malaya for Borneo and had no intention of returning. That was conceded by the respondent board. In fact, the applicant is at present a judicial officer serving in the Borneo States.

The only issue pertinent to the present application is the construction of the provisions of section 13(1)(d) of the Employees Provident Fund Ordinance which reads:—

> "13(1). No sum of money standing to the credit of a member of the fund may be withdrawn from the fund except with the authority of the board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the board is satisfied that —
>
> (d) the employee is about to leave Malaya with no intention of returning thereto".

In the light of the concession made by the respondent board, the sole question to be resolved is whether the word "Malaya" as enacted in sub-section (1)(d) means what it says or whether it means "Malaysia". If "Malaya" means "Malaysia", then it is fatal to the present application.

The Employees Provident Fund Ordinance has quite a long statutory history, and I must consider it. The Ordinance came into force on 1st October, 1951. It is singularly significant to note that throughout the Ordinance the only place where the word "Malaya" is used is under section 13(1)(d). In four other places, that is section 2, the interpretation section, section 3, dealing with the constitution of the board, and the schedule to section 2, the phrase "Government of the Federation" is used, and in section 4, the provision which establishes the provident fund, section 5, in relation to expenses, and section 16(5), which requires an employer to furnish the board with certain particulars in respect of the approved fund, the word "Federation" is used to denote the identity of the country. None of those phrases or words, that is, "Government of the Federation", "Federation" or "Malaya" have been defined in the Ordinance and therefore it is necessary to resort to the Interpretation and General Clauses Ordinance, 1948. Under section 2 which deals with definitions it is perfectly clear that "Malaya" was defined to include all the Malay States and Settlements comprising the Federation of Malaya as well as the Colony of Singapore. The important distinction here is that "Federation", which was defined as "The Federation of Malaya established pursuant to the Federation of Malaya Agreement, 1948", was not to include Singapore, whereas "Singapore" has been included within the definition of "Malaya" as early as 1948. The Ordinance was amended from time to time, but for purposes of present consideration no significant amendment was made until 1959. In that year, consequent upon the establishment of the State of Singapore, the Ordinance pertaining to Singapore was amended and the definition of "Malaya" then was defined as "States of the Federation and Singapore". The changes made in 1959 have remained until

to-day in the Ordinance. The legislature has thought fit not to alter the meaning of the word.

Insofar as the Employees Provident Fund Ordinance is concerned, various amendments were made but section 13(1)(d) has left the word "Malaya" untouched. With the emergence of Malaysia, the provisions of Part IV of the Malaysia Act have effect as if embodied in the Constitution (see article 159A). It is therefore necessary to consider the relevant transtitional and temporary provisions. Section 73 of the Act enacts:—

"73(1). Subject to the following provisions of this Part of this Act and to any law passed or made on or after Malaysia Day, all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed:

Provided that references to the Federation (except in relation to a time before Malaysia Day) shall be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly.

(4) This section shall not validate or give effect to any provision contained in the present law of the Federation which is inconsistent with the Constitution, or any provision of present law which is invalid for reasons other than inconsistency with the Constitution.

(5) In this Part of this Act 'present laws' means the laws of the Federation, of each of the Borneo States, and of Singapore passed or made before Malaysia Day, but does not include the Constitution of the Federation or any of those States or this Act".

The Employees Provident Fund Ordinance is accordingly a present law. Is the Ordinance and in particular is section 13(1)(d) inconsistent with any provisions of the Constitution? The answer must be found in the Constitution itself. Whereas "Malaya" is defined in item (48) of the Interpretation and General Clauses Ordinance as "States of the Federation", that phraseology is nowhere defined under article 160 of the Constitution nor in the Malaysia Act. However, item (86C) of the Interpretation and General Clauses Ordinance defines "States of the Federation" as "the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor, Trengganu, Malacca and Penang, and all dependencies, islands and places which on Merdeka Day were administered as part thereof, and the territorial waters adjacent thereto". It is submitted by Dato' Athi Nahappan that insofar as the Employees Provident Fund Ordinance is concerned the inclusion of "Singapore" is no longer consistent with the Constitution when she seceded from Malaysia (see section 3 of Constitution and Malaysia (Singapore Amendment) Act, No. 53 of 1965. Since the Ordinance is inconsistent with the Constitution, the court is empowered by article 162(6) to modify the said Ordinance so as to bring it into accord with the provisions of the Constitution. Therefore, with the separation of Singapore, "Malaya" in the Employees Provident Fund Ordinance means "States of the Federation". Up to that point counsel's argument is beyond criticism, but he goes further to say that "Malaya" now means "States of Malaya" and accordingly prayed for the court's indulgence to modify the meaning of "Malaya" so as to bring it into accord with the provisions of the Constitution. He based his reasoning on the proposition that since the original intention of the Employees Provident Fund Ordinance was to confine its application to the States of Malaya and Singapore, with the emergence of Malaysia the States of Malaya are still the original "States of Malaya" as defined in article 1(2)(a) of the Constitution. Counsel finds support for that proposition on the basis that the lesser does not include the greater, meaning that the States of Malaya do not include the States of the Federation but the States of the Federation include or consist of the States of Malaya and the Borneo States.

In my opinion, the ingenuity of counsel's argument overlooked one of the canons of construction of statutes which is this: where a statute does not define words, it is proper to determine their meaning and the intention of the legislature in enacting them by a consideration of the whole statute and every part of it. "And in order to understand these words it is natural to enquire what is the subject-matter and the object in view" (*Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.*[1]). As was stated by Lord Goddard C.J. in *Barnes* v. *Jarvis*,[2] "A certain amount of common sense must be applied in considering statutes. The object of the Act must be considered". What then is the object of the Employees Provident Fund Ordinance? It is to provide financial security to an employee in his old age. The Ordinance was originally drafted for Malaya and Singapore. The intention is that unless a contributor leaves Malaya and Singapore with no intention of returning as distinct from leaving one State for another State within the constituent part of Malaya and Singapore, he is not entitled to withdraw his money. That is consistent with the Ordinance read as a whole. With the emergence of the Federation of Malaya in 1957 as an independent and sovereign State, the provisions of the Ordinance in conformity with the new constitutional changes were made to apply to the whole of the new emerging State. Thus, item (48) of the Interpretation and General Clauses Ordinance defines "Malaya" as "The States of the Federation and Singapore". "States of the Federation" as defined in item (86C) of the Interpretation and General Clauses Ordinance means the nine Malay States and the two former Settlements of Penang and Malacca. Such is the intention of the Employees Provident Fund Ordinance in the light of the new constitutional set-up. Although "Malaya" in the Ordinance is not amended, the Interpretation and General Clauses Ordinance is amended to fit in the new changes. With the emergence of Malaysia, neither "Malaya" in the

Employees Provident Fund Ordinance nor "States of the Federation" in the Interpretation and General Clauses Ordinance were amended to fit in the new changes. However, Part IV of the Malaysia Act is embedded in the Constitution and the proviso of section 73(1) of the Act enacts "that references to the Federation shall be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly". It therefore follows that reference to "States of the Federation" would now bear reference to "States of Malaysia and Singapore", and with the secession of Singapore it would now mean "States of Malaysia". That is my interpretation of "Malaya" in the Employees Provident Fund Ordinance as defined by the Interpretation and General Clauses Ordinance having regard to the proviso of section 73(1) of the Malaysia Act. That, to my mind, is not inconsistent with the provisions of article 1(2) of the Constitution which declares "States of the Federation" as the eleven States of Malaya and the two States of Borneo. As a matter of deduction, section 13(1)(d) of the Employees Provident Fund Ordinance, which derives its definition of "Malaya" from the Interpretation and General Clauses Ordinance, is not inconsistent with any provision of the Constitution. If the result appears grotesque, that is not a reason why the law should not be enforced, but it may be a reason why the law should be altered.

I would therefore dismiss the application with costs.

Application dismissed.

Solicitors: *A. Nahappan & Co.; Shook Lin & Bok.*

LIM TRADING CO. v. SINCLAIR

[O.C.J. (Buttrose J.) April 21, 1967]

[Singapore — Suit No. 1316 of 1965]

Insurance — Indemnity for loss of shares by theft — Obtaining shares by false pretences — Whether "theft" within the meaning of policy.

The plaintiffs were a firm of share and stockbrokers. A fraudulent customer of theirs bought shares to the value of $69,346.52 and issued cheques in payment for the shares. The cheques were dishonoured and the customer had disposed of the shares and made off with the proceeds. The plaintiffs brought this action to recover the sum of $69,346.52 from the defendant, a Lloyd's underwriter, by way of indemnity, under a policy of insurance covering amongst other perils, loss of the shares by theft. The short and only point for decision in the case was whether the facts constituted a theft within the meaning of the policy. The defendant contended that theft and the other perils insured against involved the removal of the shares without the consent of the stockbrokers and the facts of the case indicated obtaining the shares by false pretences and not theft.

Held: in essence the transaction was one of obtaining the shares by false pretences and not by theft within the meaning of the policy. Under English law it would be regarded and punished as false pretences and under Singapore law as cheating and in neither case as theft within the meaning of the policy or in the fullest sense of the term itself and therefore the plaintiffs' claim must be dismissed with costs.

Cases referred to:—

(1) *Lake* v. *Simmons* [1927] A.C. 487, 509.

(2) *Pawle & Co.* v. *Bussell* (1916), 85 L.J. K.B. 1191.

(3) *Lake* v. *Simmons* [1926] 1 K.B. 366, 375.

(4) *Eisinger* v. *General Accident Fire & Life Assurance Corporation Ltd.* [1955] 2 All E.R. 897.

(5) *R.* v. *Stewart* (1845), 1 Cox C.C. 174.

CIVIL SUIT.

L. A. J. Smith for the plaintiffs.

A. P. Godwin for the defendant.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiffs, a firm of stock and share brokers, claimed the sum of $69,346.52 from the defendant, a Lloyd's underwriter, for a loss under an insurance policy covering amongst other perils, loss by theft.

The facts were that one Lim Pow Tian a customer of the plaintiffs came to their office and bought shares to a total value of $69,346.52. He issued three cheques in payment for the shares which he gave to the plaintiffs who in turn issued receipts therefor and handed him the shares. The cheques were dishonoured and it was subsequently discovered that Lim Pow Tian had disposed of the shares and disappeared with the proceeds and the police have been unable to trace him. It was admitted that he had no funds in the bank to meet these three cheques.

On these facts the plaintiffs, by virtue of an amendment to their statement of claim which I allowed at the trial, claimed to be indemnified under the policy for loss sustained by theft by one Lim Pow Tian a customer of the plaintiff firm and the short and only point for decision in so far as the plaintiffs' case was concerned was did the facts constitute a theft within the meaning of the policy.

The policy was the usual Lloyd's in and out stockbrokers policy effecting insurance against the loss or deprivation of the various securities listed therein which included shares. In so far as is material to the present case the six perils insured against were loss by robbery, theft, fire, explosion, burglary or abstraction whether by officers, clerks or servants of the assured, or by any other person or persons or contributed to by the negligent or fraudulent conduct of the said officers, clerks or servants or other person or persons.

It was contended on behalf of the defendant that the plaintiffs were swindled by their customer who under English law would be guilty of obtaining the shares by false pretences and under the Singapore Penal Code (Cap. 119) of